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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,460	03/11/2004	Erica Louise Evans	CM2731	6115

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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/798,460	Applicant(s) EVANS ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on March 16, 2006. Claims 1-12 are pending. Claim rejection made under 35 U.S.C. § 112, second paragraph, as indicated in the previous Office action dated December 2, 2005, is withdrawn in view of the claim amendment. Claim rejection made under 35 U.S.C. § 103 (a) as indicated in the same Office action is modified to address the more specified claimed limitation as amended by applicants.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. (US 2002/0041889 A1) in view of Oblong et al. (US 6217888 B1).

Claim 1 is directed to a composition comprising a) greater than 7 % by weight of the composition of glycerin; b) a vitamin B₃ compound; and c) a natural moisturizing compound comprising aspartic acid, threonine, serine, . . . or mixtures thereof.

Masuda et al. teach a topical preparation comprising glycerin, DL-serine, and N,N,N-trimethylglycine. See Preparation Example 3. The preparation example contains 0.1 % by weight of DL-serine, which is within the claimed limitation of instant claim 5. See also Example 10 and 11; instant claims 6 and 7. N,N,N-trimethylglycine meets the formula of instant claim 6 when R₁, R₂, R₃ are CH₃ and n=1. The reference teaches the thickening agents of instant claims 10 and 11, which include polyacrylamide, polyacrylate, and sodium polyacrylate. See [0044]. Example 6 illustrates a toilet water

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formulation comprising 0.2 % of a thickening agent, methylcellulose. See instant claim 9. The exemplified toilet water formulations contain 4 % of glycerin and 6 % of 1,3-butylene glycol. Example 8 teaches a cleansing foam comprising 10 % of glycerin. The reference teaches both glycerin and 1,3-butylene glycol as humectants, thus it would have been obvious to adjust the amount of glycerin to up to 10 % to formulate a toilet water composition with similar humectancy. See instant claims 1 and 12. The reference also teaches making compositions in the form of emulsion, lotion or cream. See [0054], Examples.

Masuda et al. also teach using medicinal ingredients including vitamin B₃, including benzyl nicotinate, nicotinamide, dl-alpha-tocopheryl nicotinate. While Masuda et al. broadly teach to make a cosmetic composition by combining the components of the presently claimed invention, the reference does not provide a specific teaching to select the vitamin B₃ compounds.

Oblong et al. teach that vitamin B₃ compound, particularly nicotinamide, is useful in regulating skin conditions such as the signs of skin aging and improving the skin texture. See col. 1, line 59 – col. 2, line 9; col. 3, line 17 – col. 4, line 44. The reference also teaches using nicotinic acid, tocopherol nicotinate, and inositol hexanicotinate, or mixtures thereof, in the most preferred amount of about 2-5 % by weight. See col. 4, line 44 – col. 6, line 57; instant claims 2, 3, and 12. The reference also teaches that preferred carriers for the invention include oil-in-water emulsion and water-in-silicone emulsions. See col. 7, line 59 – col. 10, line 58. See instant claim 8.

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It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the exemplified cosmetic compositions of Masuda et al. by incorporating to the compositions a vitamin B₃ compound as motivated by Oblong et al. because i) Masuda et al. teach adding vitamin B₃ compounds as a cosmetic additive; and ii) Oblong et al. teach that vitamin B₃ reduces the signs of skin aging and improves the skin texture. The skilled artisan would have had a reasonable expectation of successfully producing a stable and improved cosmetic composition for moisturizing and treating aging skin because both Masuda et al. and Oblong et al. compositions are directed to compatible formulations such as emulsions, cream, and lotion.

Response to Arguments

Applicant's arguments filed on March 16, 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicants assert that the present invention is different from Masuda in that the natural moisturizing factors of the present invention is a mixture comprising amino acid in combination with urea, sodium pyrrolidone carboxylic acids, and salts. The statement does not correctly describe the actual claimed invention, because the claims merely

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require a single natural moisturizing factor selected from the amino acids or sodium-2-pyrrolidone-5-carboxylate that are recited in claim 1, subpart (c), or the mixture thereof.

The argument is not commensurate with the scope of the claim.

Applicants also argue that the combined teachings of the references do not render the claimed invention obvious because Oblong fails to teach the potential benefits of increased penetration of vitamin B3 compounds into the skin, the benefits of combined effects of B3 compound, an NMF composition, and increased glycerin. Examiner respectfully disagrees. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). As indicated in the rejection, Oblong teaches the cosmetic benefits of topical administration of vitamin B3 (i.e., regulating skin conditions such as the signs of skin aging and improving the skin texture). While the reference does not explicitly teach the penetration enhancing property of vitamin B3, the reference in fact provides objective motivations for a skilled artisan to use the compound to combine with the composition of Masuda. Furthermore, it is viewed that the benefits of the present composition obviously result by combining the active ingredients as motivated by the teachings of the references.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 7:00AM until 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER